United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT AND JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,794

844

AMANDA SMITH,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HENRY LINCOLN JOHNSON, JR.
626 Third Street, N. W.
Washington 1, D. C.

Attorney for Appellant.

QUESTIONS PRESENTED

I.

Does an Act of Congress establishing property rights in insurance policies in wives of insured husbands vest an interest invulnerable to the claim of government judgment or lien against the surrender values?

II. & III.

Is the assignment of a policy between husband and wife ineffective so as to prevent successful garnishment by a government tax judgment?

Will the assignment and transfer of the possession of a policy of life insurance and the subsequent payment of the premiums by a wife beneficiary create a fund in the hands of the insurer subject to garnishment by a judgment creditor of the insured?

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AMANDA SMITH,

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APPEAL FROM THE UNITED STATES DISTRICT COURT
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BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal from adverse judgments entered against appellant here, added party below, upon Motions for Condemnation of the cash surrender value of two (2) policies of insurance issued by the Metropolitan Life Insurance Company and the North Carolina Mutual Life Insurance Company upon the life of the husband of the appellant, so as to apply the same to a tax judgment obtained by the appellee against

appellant's husband on June 26, 1961. The appellant filed timely notice of appeal.

Jurisdiction of this Court is to be found in the provisions of Title 28, Sections 1291 et. seq., of the United States Code, as revised and amended.

STATEMENT OF THE CASE

A judgment for tax arrears was entered in 1961 against William B. Smith, appellant's husband, in favor of the appellee and that judgment had not been satisfied. Prior to 1961 appellant had contracted for and secured an insurance policy from an agent of the Metropolitan Life Insurance Company upon the life of her husband (J.A. 5). In accordance with the necessities of the situation her husband signed the application with reference to his health and other data so as to permit the insurance company to determine the acceptability of the husband as an insurance risk and appellant was nominated the beneficiary, this designation obtained at the time of its issuance and during the time of the proceedings below. The appellant paid all of the fees and premiums on said policy contract and it has always remained in her possession. In 1920, appellant's husband, on his own account, took out an insurance policy with the North Carolina Mutual Life Insurance Company, nominated his wife, appellant, as beneficiary, and paid the premiums until 1947, at which time he secured all of the loan on this policy then available and decided to drop the policy. In accordance with the terms of the policy appellant was required to sign the note evidencing the loan as an obligor. Appellant, under the circumstances, took over the policy, paid off the loan (J.A. 4, 9), obtained the policy, possession of which she has since maintained, and, has paid all of the premiums as they became due (J.A. 10). In February, 1961, because of reasons of health, she had the beneficiary changed from her name to that of her grandson (J.A. 10), by having her husband make the application and temporarily surrendering possession, and, submitting the policy to the company for this purpose.

Both policies provided that the insured has the right to change beneficiary, but only by submitting the policy (J.A. 4), and that to be binding on the company an assignment would also require a submission of the policies.

The appellee had appellant made an "added party" below and proceeded to attach the legal reserve accumulated from the premiums paid into said policies by appellant as that reserve is reflected in the cash surrender and loan values. By motions, opposed by appellant, supported by documentary evidence otherwise uncontroverted (J.A. 4, 5, 6, 7, 8 & 9), appellee sought to condemn the same upon the ground that she was not the owner, although the possessor of the policy contracts, despite the fact that the funds sought to be attached were created entirely by her funds.

The trial Court "found" that in as much as there was no assignment of the policies "binding" on the insurance companies, the fact that appellant had possession of the policies and had paid all the premiums did not prevent its conclusion, as a matter of law, that the policies belonged to appellant's husband, in as much as the "insured" had changed the beneficiary in the policies in some respects (J.A. 14, 15). It then concluded that the funds accumulated from appellant's payment of the premiums was subject to attachment for the payment of her husband's tax judgment, and a judgment of condemnation ensued.

Appellant claims this decision was error.

STATUTES INVOLVED

Title 30, Section 212. Insurance of husband's life--By wife--By husband--Proceeds taken free from claims.

> Any married woman, by herself and in her name, or in the name of any third person, with his assent, as her trustee, may insure or cause to be insured for her sole use, the life of her husband for any definite period or for the term of his natural life; and any husband may cause his own life to be

insured for the sole use of his wife, and may also assign any policy of insurance upon his own life to his wife for her sole use; and in case of the wife surviving her husband the sum or net amount of such insurance becoming due and payable by the terms of the insurance shall be payable to her for her own use, free from the claims of the representatives of her husband or any of his creditors. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1161.)

Title 30, Section 213. Insurance for benefit of wife, children, dependent relative, or creditor not liable for husband's debts.

All policies of life insurance upon the life of any person maturing on or after January 1, 1902, and which have been or shall be taken out for the benefit of or bona fide assigned to the wife or children of or any relative dependent upon such person, or any creditor, shall be vested in such wife or children or other relative or creditor, free and clear from all claims of the creditors of such insured person. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1162.)

Title 30, Section 214. Insurance payable on death of wife to children, descendants, or her representatives.

If the wife shall die before her husband, the amount of such insurance may be payable after her death to the children or descendants for their use, and to their guardian if under age; and if there be no children or descendants of the wife living at the time of her death, to her legal representatives. (Mar. 3, 1901, 31 Stat. 1375, ch. 854, § 1163.)

Title 35, Section 716. Rights of creditors and beneficiaries under policies of life insurance.

When a policy of insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life in favor of some person other than himself having an insurable interest therein, or, except in cases of transfer with intent to defraud creditors, if a policy of life insurance is assigned or in any way made payable to any such person, the person so effecting such insurance, shall be entitled to its proceeds and avails against the creditors and representatives of the insured and of the person effecting such insurance whether or not the right to change the

beneficiary is reserved or permitted and whether or not the policy is made payable to the person whose life is insured, if the beneficiary or assignee shall predecease such person: Provided, That subject to the statute of limitations the amount of any premiums for said insurance paid with intent to defraud creditors, with interest thereon, shall inure to their benefit from the proceeds of the policy, but the company issuing the policy shall be discharged of all liability thereon by payment of its proceeds in accordance with its terms, unless before such payment the company shall have written notice by or in behalf of a creditor of a claim to recover for transfer made or premiums paid with intent to defraud creditors with specitifcations of the amount claimed. (June 19, 1934, 48 Stat. 1175, ch. 672, Ch. V, § 16; Aug. 1, 1947, 61 Stat. 711, ch. 427.)

Title 35, Section 201. Life and fire insurance companies to maintain reinsurance reserves--Suspension of license upon impairment of capital stock--Penalty for acting for unlicensed company--Superintendent may make examination to determine impairment in capital, or insolvency.

All life and fire insurance companies or associations licensed to do business in said District shall be required to maintain a reinsurance reserve fund; * * *

SUMMARY OF ARGUMENT

The Congress of the United States, in enacting Title 30, Sections 212-214, of the Code of Laws for the District of Columbia, was acting in the exercise of a combination of its Constitutional powers. It was not limited, as it were, to the subordinate reach of a state of legislature. So, even if construed to be purely "exemption" statutes, such exemption was within its legislative gift, as Congress was not inhibited, as a state legislature is, from imposing its will in this, out of deference to some superseding sovereignty. Furthermore, such a statute does not merely erect an exemption from a liability, but first, and foremost, is a legislative declaration that, from and after 1902, a wife had a statutory interest in life insurance policies, and in all sums becoming due under terms superseding the policy provisions; at least where issued upon her

husband's life, concommitant with her nomination as beneficiary. This was an interest vested in her as a matter of law, and, as the statutory sequence provides, included the familial devolution of that interest in a manner expressive of a purpose to alter the succession of such interests which otherwise might have obtained. Congress, without let or hindrance, which has and may withhold or grant the right to vote to residents of the District of Columbia, likewise, this expression of its prerogative, as parens patriae, is born of a plenary Constitutional grant and may only be downgraded beneath its unambiguous import by legislative, rather than judicial, fiat.

Even if the statutory declaration of interest and supportive exemption were not determinative of the issue, a beneficiary of a life insurance policy has a substantial interest in a contract of insurance, at least until that interest is terminated, sufficient to give such a person standing to resist the efforts of strangers, not in privity, but creditors of the debtor insured, to levy on said policy by asserting a claim, not available to the insured, against the beneficiary. The record in this cause shows by documentary evidence that the insured made his wife beneficiary of one of the two policies concerned in 1920, and in 1947 borrowed the maximum and decided not to keep it. His wife, appellant here, took over the policy, paid off the loan and has paid all of the subsequent premiums to the date of the attempted attachment. The other policy, issued by the Metropolitan Life Insurance Company, was obtained by the wife, in 1952, but issued in the name of her husband as the insured, with her as the beneficiary. The husband had no interest in said policy and never contributed a cent to create the fund the company was required by law to establish from appellant's contributions. The fact that, on the record, appellant has maintained, and retained actual possession of said policies, is uncontroverted. Under these circumstances a judicial decision that the funds, contributed by appellant for the protection of herself and her family, with the consent and knowledge of the insurance companies and the insured, are assets of the debtor and available to pay the debts of her husband is contrary to fact, reason and the law.

ARGUMENT

I

Does An Act of Congress Establishing Property Rights in Insurance Policies in Wives of Insured Husbands Vest An Interest Invulnerable to the Claim of Government Judgment or Lien Against The Surrender Values.

The issue involved turns on whether, at the time of the attachment of the judgment or lien, the tax-debtor insured had any "property rights" in the surrender value of the particular policies. In this, and, according to the Supreme Court in BESS v. UNITED STATES, 357 U.S. 51, 55, 2 L. Ed. 2nd. 1135, the test is:

> "We must now decide whether Mr. Bess possessed in his lifetime, within the meaning of §3670 [Now 26 U.S.C. §6321] any 'property' or 'rights to property', in insurance policies to which the perfected lien might attach. Since 3670 creates no property rights, but merely attached consequences, federally defined, to rights created under state laws, Fidelity Deposit v. New York City Housing, 2nd Cir. 241 Fed. 142, 144, we must look to Mr. Bess's right as defined in State Law."

Since in the Bess case, Mr. Bess had paid the premiums himself until his death[1], and, there was no assignment of it during his lifetime, the full impact of the decision on the case at bar is not applicable. But the underlying approach to the problem is helpful. Our statute does not have the servient limitations of state legislation and had Congress meant to carve an exception from our statute in favor of tax liens it was certainly free to have tailored its expression accordingly. Indeed the Supreme Court, in the Bess case, at page 57, in this particular, remarks:

> "Once it has been determined that State law created sufficient interests in the insured to satisfy the requirements of §3670, State law is inoperative to prevent the attachment of liens created by Federal Statutes in favor of the United States. Such state laws are not laws for the United States, unless they have been made such by Congress itself." (Emphasis supplied).

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[1] While the case at bar does not involve death, the treatment of the problem in the Bess case was antedated to his interest in the cash surrender value prior to his death.

In the Bess case the Court was dealing with a New Jersey statute, which gave the wife of an injured husband a vested interest, in the proceeds, of the policies, and, it appeared that Bess retained during his lifetime the right to change beneficiaries and was unhampered by assignment of his interests to cash in said policy, free of a disenabling claim that his wife had a broader interest than as mere beneficiary. A contrary result was obtained in Rowen v. Commissioner of Internal Revenue, 215 Fed. 2nd 641, where the Court held that the New York Statute, conferring rights, other than to proceeds, was not an exemption statute, but was determinative of the interests of the beneficiary, in addition to containing exemptive provisions. In the case at bar our statutes[2] vest in a wife-beneficiary a complete interest in the policy, if assigned, in addition to granting a vested interest in the net amount of insurance to be paid according to the policy upon his death, if not assigned.[3] It would appear that the interests of a wife-beneficiary, by statute, have become vested and they reach and declare the entire policy, to be appropriated to her sole use. In Central National Bank v. Hume, 128 U.S. 195, 32 L. Ed. 370, the Supreme Court then held that an insured wife had an indefeasible and vested interest in the insurance "policy" of her insured husband; the local statute was enacted with this as a background.[4] It is your appellant's contention that under our statutes, the Federal Government, by Congressional command, translated the Court's holding into a comprehensive statute defining property rights of the controlling parties, beneficiaries and creditors alike, in insurance contracts in which a wife is the beneficiary and, in furtherance of its policy, erected the barrier of such exemption to isolate her interests from attachments here involved. The declaration of the rights of all concerned by such statute creates a legislative complex of rights, and a statutory exemption

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[2] Title 30, Section 214, D.C. Code enacted in 1901.

[3] Title 30, Section 213, D.C. Code enacted in 1901.

[4] Title 35, Section 716, D.C. Code.

to withdraw them from, and regulate the reach of, attaching creditors. It would seem apparent, in as much as the statutory grant becomes a part of and controls the policies themselves, notwithstanding contrary policy provisions,[5] the designation of a wife as beneficiary is in the nature of an executory trust for her benefit, of which she cannot be deprived without her consent.[6] The real intent and reach, then, of the policies, augmented by controlling statutory addenda, should not permit the change of beneficiary, without her consent, as hers is a vested right beyond his contractual resource.

Furthermore, and while the policy could become barren by failure to pay the premiums, such failure also would have to be hers in addition to his, at least with reference to the Metropolitan Life contract which she obtained (J.A. 5), and the North Carolina policy which, with her husband's consent and the consent of the company in accepting her checks for so long (J.A. 9). It would seem absurd to concede that the statutory provision that policies she secured and obtained in a method and manner it described, vest in her the right to the "proceeds and avails" of the policy for her sole use and benefit, in one breath, and then in the next, to emassulate such provision, so that a husband's creditors, unaffected by such statutory provision or the facts, may destroy all possibility of the proceeds and avails, by subjecting her property to the payment of his debts, because of an unyielding provision of the policy. While it may not be of legal moment, it does seem preposterous, that, a wife's income, paid into a policy for her benefit, is available to pay taxes on income, which her husband never contributed to her or the policy. The fact that the rights of the creditors are limited by the statute to premium payments made in fraud of creditors, by so much, is then also to be regarded as mere disposable statutory tissue. Where no doubt exists that the

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5 Kindleberger v. Lincoln National Bank, 81 U.S. App. D.C. 101, 155 Fed. 2nd 281.

6 Tyler v. Receiver General, 226 Mass. 306, 115 N.E. 300. The entire purpose would seem to erect a comparable barrier around the family, for the protection of which the government itself is created, to the protection of familial dwellings.

Congress acted in the exercise of its undoubted Constitutional powers in creating such rights in abrogation of contrary contractual provisions of a policy, it seems out of keeping that a Court could reject the statute and embrace a policy provision in dissipation of the Congressional purpose.

II and III

It appears that Title 30, Section 214, gives Congressional permit for the assignment of such policies by the insured-husband to his wife-beneficiary. Inas much as the proceeds are not immediately available, but provided for by designation of beneficiary, such an assignment engages to vest the remaining interest of the insured, i.e., his rights to the surrender value, and to change beneficiary, in the assignee. By so much, the property interest, if any, of the insured has been terminated. Since it is well settled that the lien, or levy, to collect Federal taxes extends only to property in which the taxpayer has an interest, Bess v. U.S., supra; Central Insurance Company v. Martin Infante, 272 Fed. 2nd 234, 235, it would seem that, here, the surrender values sought to be subjected to the payment of the debtor-husband's obligations are unavailable. The uncontroverted facts of record, here, reflect that appellant's husband turned over the North Carolina Mutual Policy to her in 1947 after having borrowed the maximum loan (J.A. 7, 9). Appellant repaid the loan and all premiums since that date (and has retained the possession of the policy) by check made payable to the company. It has long been the settled law of this jurisdiction that regardless of the form of the assignment, when made, it ends the insured's interest in the policy. Compare: Brand v. Erisman, 84 U.S. App. D.C. 194, 195; 172 Fed. 2nd 28. It is critical of the case here, however, to determine who, as between

appellant and her husband, short of its ultimate proceeds, has a property right in its surrender value. In the case of Burgo v. United States, 79 Fed. Supp. 143, aff'd. 175 Fed. 2nd. 196, an insured wife, similar to the case at bar, had possession of the policy and paid the premiums after having acquired it, the Court held that the right to the surrender value, and all other benefits under such a policy belonged to the wife-beneficiary.

Indeed, it appears that all of the cases may be reconciled upon the postulate that the government's rights, in such policies, can "rise" no higher than the taxpayer's, and, if he had no right, there was nothing to attach. Atlantic Refining Co. v. Cont. Casualty Co., 183 Fed. Supp. 483. Under the provisions of Title 35, Section 716 of the District of Columbia Code, appellant had a vested right and interest in the "proceeds and avails" of the policy. This language, imported from a New York Model, has been interpreted to include the surrender value of a policy. Levine v. Grey, 271 N.Y.S. 2nd 87, even without assignment, as against a tax claim of the United States. Rowen v. Commissioner of Internal Revenue, supra.

With regard to the policy issued by the Metropolitan Life Insurance Company, it appears from the undisputed facts, that appellant, with the knowledge and consent of the insured and the agent of the company (J.A. 4), took out insurance on the life of her husband, and she was made beneficiary. She paid the first and all subsequent premiums and retained the policy; this was a right that she was accorded and to which no party offered objection. Appellant's procedure in these cases is in conformity with the statutory directions to obtain a vested right in the policies and their avails, for her sole use and benefit. The statutory scheme, all of which controls the policies involved, Kindleberger v. Lincoln National Bank, supra, along with the knowledge of the companies as to the interest of the appellant, - (imparted through their agents (J.A. 5), and by the acceptance of the loan repayment and premium payments (J.A. 7,9)), brought home to the companies, Prudential Life Insurance Company v. Saxe, 77

U.S. App. D.C. 144, 134 Fed. 2nd 16, the interest of appellant upon the receipt of the first premium. Central National Bank v. Hume, supra. This right to the surrender value or right to cancellation is an assignable one, Bess v. U.S., supra, (at page 56). Such a conclusion is consistent with the statutory perogative to insure her husband and obtain an assignment, as she did in the Metropolitan Life policy, but the existence of the right in the husband to defeat a statutory grant in his wife may not consistently be interpreted to arise merely from the fact of permissive policy provisions which the statute governs.

No consideration of this problem may be properly appraised without reference to the whole statutory scheme provided in the District of Columbia for insurance companies and the method by which the cash surrender value is created. Title 35, Section 201, provides that each life insurance company shall maintain on a reinsurance fund and Section 705(b)(6)(b)(c)(d) erects a standard for computing the amount of the cash surrender value from out of the premiums paid on life insurance contracts of insurance. These statutes, along with the policy, constitute the rights of the party entitled to the value created in compliance with the payment of premiums. It is your appellant's view that no interpretation of her rights under such policies is permissible which excludes her from contractual interest indispensable to its value. Nor can the insurer, with the knowledge of the payment of the premiums by appellant, after the assignment, create a fund from her money and allocate it to her assignor. This fund, created by appellant from her own funds, is assignable, by her as well as by her assignor before her, but once assigned, the assignor loses his entire interest, legal as well as equitable, in the policy. First Trust Co. v. North. Mut. Ins. Co., 283 N.W. 236, 204 Minn. 244. The end result prevents the insured from realizing upon the cash surrender value. Baginska v. Metropolitan Life Ins. Co., 296 N.Y.S. 502.

CONCLUSION

Wherefore, your appellant says that the grant of the motions to condemn the surrender value of her policies of insurance, was error, and that the judgment of the trial Court should be reversed.

Respectfully submitted,

HENRY LINCOLN JOHNSON, JR.
626 3rd Street, N.W.
Washington 1, D. C.
Attorney for Appellant.

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JOINT APPENDIX

[Filed Aug. 20, 1962]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WILLIAM B. SMITH, Plaintiff,	)	
v.	)	Civil Action No. 3314-50
HANK P. SMITH, Defendant.	)	

MOTION FOR JUDGMENT OF CONDEMNATION

Comes now the plaintiff in intervention, the United States of America, by its attorney, the United States Attorney for the District of Columbia, and moves this Court for judgment of condemnation in the amount of $1603.54, such amount representing the cash surrender value of $1553.54 of Metropolitan Life Insurance Company Policy No. 01 005 716-SC, issued to the debtor plaintiff, William B. Smith, plus the terminal dividend of $50.00 payable to William B. Smith upon surrender of the policy. The amount of $1603.54 is in the hands of the garnishee, the Metropolitan Life Insurance Company, and was attached by the plaintiff in intervention on February 15, 1962.

/s/ David C. Acheson
United States Attorney

/s/ Charles T. Duncan
Principal Assistant United States Attorney

/s/ Joseph M. Hannon
Assistant United States Attorney

/s/ Robert B. Norris
Assistant United States Attorney

[Certificate of Service]

[Filed Aug. 20, 1962]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR JUDGMENT OF CONDEMNATION

On June 26, 1961, judgment was entered against the debtor-plaintiff William B. Smith in the amount of $33,780.85 plus interest at 6 per cent on $33,494.43 from June 6, 1952, and on $286.42 from October 15, 1962, less credit for an interest of $10,516.27. This judgment is still unsatisfied.

On February 15, 1962, the plaintiff in intervention, the United States of America, attached $1,603.54 which amount is presently in the hands of the Metropolitan Life Insurance Company. This amount represents the cash surrender value of Metropolitan Life Insurance Company Policy No. 01 005 716-SC, issued to the debtor-plaintiff as well as the terminal dividend payable to the debtor-plaintiff upon surrender of the policy.

In the instant case the tax lien against the debtor-plaintiff has been reduced to a judgment. It is well settled that where a valid lien for taxes attaches to the cash surrender value of an insurance policy, the Government is entitled to have its lien satisfied to the full extent of the cash surrender value. United States v. Bess, 357 U.S. 51 (1958). Internal Revenue Code (1954), Section 6321, provides that a tax lien covers "all property and rights to property, whether real or personal" which belong to the delinquent taxpayer. The only exceptions to the Federal tax lien are those contained in Internal Revenue Code (1954), Section 6334, and it should be noted that no exception is afforded as to insurance or personal earnings.

An insured, as the debtor-plaintiff, has a property interest in a life insurance policy which has a cash surrender value. United States v. Metropolitan Life Insurance Company, 256 F.2d 17, 25 (4th Cir., 1958); United States v. Bosk, 180 F. Supp. 869 (D.C. S.D. Fla., 1960). It has even been held that an insured has a property interest in an insurance policy which has no cash surrender value, but only a borrowing capacity. United States v. Trout, 46 F. Supp. 484 (D.C. S.D. Calif., 1941).

WHEREFORE, because of the aforementioned points and authorities, the plaintiff in intervention, the United States of America, respectfully submits that its motion for judgment of condemnation should be granted.

/s/ David C. Acheson
United States Attorney

/s/ Charles T. Duncan
Principal Assistant United States Attorney

/s/ Joseph M. Hannon
Assistant United States Attorney

/s/ Robert B. Norris
Assistant United States Attorney

[Filed Sept. 24, 1962]

MOTION FOR JUDGMENT OF CONDEMNATION

Comes now the plaintiff in intervention, the United States of America, by its attorney the United States Attorney for the District of Columbia, and moves this Court for judgment of condemnation in the amount of $580.51, such amount representing the cash surrender value of the North Carolina Mutual Life Insurance Company Policy No. 33390, issued to the debtor-plaintiff, William B. Smith, who was known as John Willie Smith on July 31, 1920, the date the said policy was issued. The amount of $580.51 is in the hands of the garnishee, the North Carolina Mutual Life Insurance Company and was attached by the plaintiff in intervention on or about July 6, 1962.

/s/ David C. Acheson
United States Attorney

/s/ Charles T. Duncan
Principal Assistant United States Attorney

/s/ Joseph M. Hannon
Assistant United States Attorney

/s/ Robert B. Norris
Assistant United States Attorney

[Filed Sept. 1, 1962]

EXCERPTS FROM INTERROGATORIES

* * * * *

2. * * *

(a) Please state the policy number and the date the policy was issued to you.

(b) Have you named a beneficiary? If so, who?

(c) Have you reserved the right to change the beneficiary?

(d) Have you the privilege of obtaining a loan against the policy?

(e) Have you ever applied for and/or obtained a loan against this policy? If so, when?

* * * * *

/s/ Robert B. Norris
Assistant United States Attorney

[Certificate of Service]

[Filed Sept. 25, 1962]

EXCERPTS FROM ANSWER OF
WILLIAM B. SMITH TO INTERROGATIVES

* * * * *

2. * * *

(a) 33390; 7/31/20.

(b) My wife wanted the beneficiary changed to her grandson when she was informed by physicians she would die from cancer within Sixty (60) days -- the beneficiary was changed in accordance with her directions, when she turned the policy over to the company for this purpose.

(c) The policy provides that the beneficiary may only be changed by presenting the policy if not assigned; my wife has the policy.

(d) No; the wife or beneficiary has to agree to a loan on this policy and the policy has to be presented.

(e) In 1947 I originally got a loan on the policy, but my wife repaid the loan and took over the policy; $316.37.

* * * * *

/s/ William B. Smith

* * * * *

[Filed Oct. 18, 1962]

Washington, D.C. October 2, 1962.

TO WHOM IT MAY CONCERN:

I, HARRY GOLDSMITH, Metropolitan Life Ins. Representative, state that this policy No. 01005716 SC on the life of WILLIAM B. SMITH, was purchased by his wife, AMANDA SMITH, and that AMANDA SMITH has been paying the premiums on said policy from the date of issue.

/s/ Harry Goldsmith

[JURAT the 2nd day of October, 1962]

[Filed Oct. 30, 1962]

PLEA AND OPPOSITION TO GARNISHMENT OF THE GARNISHMENT OF THE CASH SURRENDER VALUE OF POLICY ISSUED TO WILLIAM A. SMITH BY THE NORTH CAROLINA INSURANCE COMPANY

Amanda Smith, added party, respectfully shows unto the Court:

I.

Heretofore the North Carolina Mutual Life Insurance Company issued its policy upon the life of William A. Smith, a/k/a/ William B. Smith, the husband of the added party, and your added party was designated the beneficiary. That policy provides that no loan or cash surrender value are available except upon presentation of the policy, among other requirements. In 1947 your added party and the insured secured a loan on said policy which was evidenced by a policy loan under the terms of which both

the insured and added party undertook to repay said loan. A copy of said certificate is attached hereto marked Exhibit "A".

II.

Thereafter, and because of business reverses the insured was unable to and abandoned the policy payments including the loan obligation at which time your added party undertook to repay the loan and the premiums. Checks for these payments by added party, copies of which are attached hereto marked Exhibit "B" are annexed and prayed to be read herewith. Your added party in 1961, during a siege of illness had the beneficiary changed to her grandson, an infant, but retained and still retains the policy in her possession.

III.

Your added party says that no funds in that policy belong to the insured and that the fund formed from out of her premium payments and repayment of the policy loan belong to her and the insured has not contributed to such fund nor does he have any interest or property therein.

IV.

Your added party adopts the position taken in her memoranda filed in this cause in re the attachment of another policy which she secured on the life of her husband in so far as the same are applicable to her position as wife, possessor and owner of the fund here sought to be applied to the separate debts of her husband. Added party further says that the attempt to frustrate the contractual purpose of the payments which she has made into this insurance agreement and to appropriate her property therein is wrongful.

Wherefore, added party asks:

1. That the garnishment be discharged and the garnishee be released.
2. That the motion for condemnation of her property be denied.
3. For such other relief as may be meet and proper.

/s/ Henry Lincoln Johnson, Jr.
Attorney for Added Party Amanda Smith

[Certificate of Service]

Ord. 195

7

POLICY LOAN CERTIFICATE

POLICY NUMBER 33390 DATE OF LOAN JUL 18 1947 19__ LOAN $ 316.37

THIS AGREEMENT, between the NORTH CAROLINA MUTUAL LIFE INSURANCE COMPANY, hereinafter called the Company, and John W. Smith and Amanda Smith, Wife hereinafter called the Borrower. WITNESSETH: The Company agrees to loan, and does hereby loan, to the Borrower the sum of THREE HUNDRED SIXTEEN AND 37/100 Dollars, the receipt of which by the Borrower is hereby acknowledged; and the said Borrower agrees to repay the same to the Company at its office, 114 Parrish Street, Durham, North Carolina, as hereinafter provided.

In consideration of said loan the Borrower hereby assigns, transfers and sets over to the Company, as collateral security for the repayment of said loan, all right, title, and interest in a certain policy of insurance, issued by the Company under and governed by the statutes of the State of North Carolina, namely: Policy No. 33390 on the life of John W. Smith, including all present and future additions thereto, together with all money that may hereafter become payable under same.

The Borrower shall have the right to repay said loan at any time while said policy is in force, and upon such payment, with interest, the Company shall cancel this agreement.

Said loan shall bear interest from the date the loan is granted at the rate provided in said policy, payable annually on the anniversary date of the policy and, unless duly paid, said interest shall be added to the principal of the loan and bear interest at the same rate and on the same conditions. Payments of interest and payments on account of principal, may be made at the Home Office of the Company, 114 Parrish Street, Durham, North Carolina, or at such other office as may be designated by the Company; but only in exchange for the Company's official receipt, signed by the Secretary and countersigned by a person authorized to receive such payment.

Whenever the principal of said loan, with overdue interest added thereto, shall equal the loan or cash surrender value of said policy, then the policy shall become void and of no effect at the time and upon the conditions provided in said policy for such contingency.

If the principal sum of this agreement has not been filled in, the Company is hereby expressly authorized and directed to insert at its Home Office as a principal sum the total amount of the loan indebtedness.

Each person executing this form represents to the Company that he (or she) has attained to majority according to the laws of the state in which he (or she) resides, or that he (or she) is empowered by law to execute this form even though majority has not been attained.

Any notice under this agreement duly addressed and mailed to the last known postoffice address of the Borrower shall be deemed to have been duly served.

EXECUTED at Washington this 11 day of July 19 47

WITNESS M. L. Reed

ADDRESS 2002-11-NW

TOWN OR CITY

WITNESS Yvonne Lenaugh

ADDRESS 3003 13th St NW

TOWN OR CITY Wash. D.C.

WITNESS

ADDRESS

TOWN OR CITY

John W. Smith INSURED OK RR

P. O. ADDRESS
Specify Street, Avenue, etc.

TOWN OR CITY

X Amanda Smith BENEFICIARY

P. O. ADDRESS 2811 11th St. NW

TOWN OR CITY Washington, D. C.

ASSIGNEE

P. O. ADDRESS

TOWN OR CITY

Signatures must be in INK and each signature duly witnessed.

5.7.

		314.7
10.81	8-11-53	300.64
		1954
17.49		318.13
3.60		321.73
18.13	10-8-54	303.60
.59		304.19
3.60	10-10-54	300.59
		1955
14.08		314.67
.05		314.62
14.03	8-4-55	300.64
		1956
17.99		318.63
.10		318.73
17.99	8-2-56	300.74
		1957
17.30		318.04
17.94	7-18-57	300.10
.64		300.74
		1958
16.25		317.59
18.04	7-7-58	299.55
1.17		300.72
		1959
17.34		318.06
318.06	7-1759	Loan Calls

Loan No. 33390

POLICY LOAN CERTIFICATE

Name MR. JOHN W. SMITH

Policy No. 33390 Prem. Payable S. A.

Date of Policy 7-31-1920 Kind Life

Date of Loan JUL 18 1947

Due Date of Loan 7-31-1947

Amount of Loan	Int. Added	PAYMENTS Amt.	PAYMENTS Date	Principal Dec. 31, 19__
316 37				1948
	19 03			335.40
		18 98	7-19-48	316.42
	63			317.05
	42			317.47
		106	8-9-48	317.41
				1949
18 62				336.03
10 16				346.19
18 51				329.55
6.86	JUL 18 1947			336.06
				336.12
				317.08
				1951
18 97				336.05
12 04				348.09
		37 69	8-6-51	310.40
7 50				317.90
				1953
17 81				335.71
		19 07	7-7-53	316.64
1 14				317.78

DEDUCTIONS - CREDITS

316.37	
7.86	
.68	
307.83	
316.37	316.37

LOAN ANALYSIS

Mr. John W. Smith
2511 11th Street, N. W.
Washington, D. C.

Amount of New Loan
Less Old Loan
- Premium Lien
- Extension Request
- Interest on Extension Request
- Premiums Due Part July 1947 S. A. Prem. Cr. #135783
- Interest on Arrears
- Interest on New Loan to 7-31-1947 from 7-18-1947
- Company Check issued for

PAID
JUL 18 1947
NATIONAL LIFE INSURANCE CO.
DURHAM, N. C.

WASHINGTON
7-17-1947 B-53
POLICY IN OFFICE

WASHINGTON, D.C. 7/31 [N.P. 66-45] 1956 No.

INDUSTRIAL BANK OF WASHINGTON
11TH AND U STREETS, N.W.

PAY TO THE ORDER OF North Carolina Mutual Life Insurance Co. $17.99

seventeen 99/100 DOLLARS

For John W. Smith
Policy No. 33390

Amanda G. Smith
1811 11th St. N.W.

WASHINGTON, D.C. 7/16 1956 No.

INDUSTRIAL BANK OF WASHINGTON 15-95/511
11TH AND U STREETS, N.W.

[N.P. 66-45]

PAY TO THE ORDER OF North Carolina Mutual Life Insurance Co. $17.94

seventeen 94/100 DOLLARS

For John W. Smith

Amanda G. Smith
1811 11th St. N.W.

WASHINGTON, D.C. 7/15 1956 No.

[N.P. 66-45]

INDUSTRIAL BANK OF WASHINGTON 15-95/511
11TH AND U STREETS, N.W.

PAY TO THE ORDER OF North Carolina Mutual Life Ins. Co. $18.04

Eighteen dollars 04/100 DOLLARS

interest on note
for John W. Smith

Amanda G. Smith
1811 11th St. N.W.

WASHINGTON, D.C. 7/15 1956 No.

[N.P. 66-45]

INDUSTRIAL BANK OF WASHINGTON 15-95/511
11TH AND U STREETS, N.W.

PAY TO THE ORDER OF North Carolina Mutual Life Ins. Co. $318.76

Three hundred eighteen dollars seventy six DOLLARS

Total loan & interest
note for Mr. John W. Smith
Policy No. 33390

Amanda G. Smith
1811 11th St. N.W.

[Filed Oct. 30, 1962]

AFFIDAVIT IN RE GARNISHMENT OF THE NORTH CAROLINA MUTUAL INSURANCE COMPANY, GARNISHEE

DISTRICT OF COLUMBIA, ss:

I, Amanda Smith, being first duly sworn according to law depose and say that I am the wife of William B. Smith and that he is the party insured under the policy under which this proceeding is drawn; I was the beneficiary until my illness became acute and I had the beneficiary changed to my grandson, an infant; I paid the loan on the policy when my husband decided that he could not keep it and have paid all of the premiums since the loan was made; I have annexed to this affidavit my checks for the repayment of the loan and the premiums; I still have possession of the policy. I have also included a copy of the cancelled note for the policy loan which the insurance company required me to sign as beneficiary.

/s/ Amanda Smith

[JURAT the 29th day of October, 1962]

[Filed Feb. 11, 1963]

MEMORANDUM

This matter is before the court on motions of the United States of America for judgment of condemnation of two policies of life insurance, seeking to obtain the cash surrender value of said policies to satisfy in part the judgment entered herein against plaintiff on June 26, 1961. The United States is the plaintiff in intervention, and Amanda Smith, plaintiff's wife, is a party-plaintiff. The facts are as follows:

On June 11, 1952, a notice of a Federal tax lien for an assessment of back Federal income taxes against the plaintiff, William B. Smith, was filed in the United States District Court for the District of Columbia, No.

27214. As a result thereof the United States of America became the plaintiff in intervention herein, and subsequently on June 26, 1961, judgment was entered against the plaintiff in favor of the United States, the effect of which was to reduce to judgment the Federal tax lien No. 27218. Thereafter, on February 15, 1962, the United States caused an attachment to issue for $1,603.54, which amount is presently in the possession of the Metropolitan Life Insurance Company, garnishee, and represents the cash surrender value and terminal dividend as of February 15, 1962, of Metropolitan Life Insurance Company Policy Number 01 055 716 - SC, issued to the plaintiff, William B. Smith, on policy date June 21, 1951.

Also, on or about July 6, 1962, the United States caused an attachment to issue for $580.51, which amount is presently in the hands of the garnishee, North Carolina Mutual Life Insurance Company, and represents the cash surrender value of North Carolina Mutual Life Insurance Company Policy Number 33390, issued to plaintiff under the name of John Willie Smith on policy date July 31, 1920.

Plaintiff in intervention, United States of America, seeks judgment of condemnation on both of said policies, claiming that William B. Smith has a property interest in them which is subject to Federal tax lien No. 27214, reduced to a judgment herein.

Plaintiff, however, disclaims any property interest in the policies; and his wife Amanda maintains that if there be a property interest in the policies, it belongs to her, as she secured these policies upon the life of her husband, has physical possession of them, and has paid the premiums thereon with her own funds. Further, she asserts that any proceeds or property interest is not subject to garnishment proceedings.

Metropolitan maintains that while its policy remains in effect, the company possesses no property interest belonging to the taxpayer or anyone else; but should the court find otherwise, the court should then order the policy surrendered before it is required to pay any funds. The North Carolina Mutual Life Insurance Company did not file any responsive pleading to the motion of the United States, but did answer the interrogatories propounded by the government and which were secured to the notice

of attachment served on it, on or about July 6, 1962.

Basically, the question before the court is whether or not these policies represent property interests which are attachable to satisfy a Federal tax lien reduced to judgment: and if so, who is the legal owner of said property interests with respect to the two policies, the plaintiff, William B. Smith, or his wife, Amanda.

The contention that there are no property rights (cash surrender value) in said policies or that they are not subject to a federal tax lien is quite erroneous.

The cash surrender value of a policy of life insurance is a "property right" or "right to property" within the meaning of section 6321 of the Internal Revenue Code of 1954 (26 USC 6321), United States v. Bess, 357 U.S. 51. In Bess certain policies of life insurance belonging to Mr. Bess were attached by the United States under former section 3670 of the Internal Revenue Code of 1939. The court in finding an attachable property interest in the policies commented:

> "Thus Mr. Bess 'possessed just prior to his death, a chose in action in the amount stated [i.e., the cash surrender value] which he could have collected from the insurance companies in accordance with the terms of the policies.' 243 F. 2d 675, 678. It is therefore clear that Mr. Bess had 'property' or 'rights of property', within the meaning of §3670, in the cash surrender value." p. 56.

Further, in disposing of the idea that under state law (New Jersey), the property right represented by the cash surrender value was not subject to a creditor's lien, the court stated:

> ". . . state law is inoperative to prevent the attachment of liens created by federal statutes in favor of the United States. . . . . The fact that in §3691 Congress provided specific exemptions from distraint is evidence that Congress did not intend to recognize further exemptions which should prevent attachment of liens under §3670." p. 57.

See also, United States v. Metropolitan Life Insurance Company, 4th Circ., 256 F. 2d 17, where the United States, as here, sought to condemn certain

policies of insurance to satisfy a tax lien, and the court in sustaining the government's position stated:

> "The interest of the insured in the policies has been brought under the jurisdiction of the court in what is essentially a garnishment proceeding in so far as it relates to his interest in the policies and the promises for his benefit therein contained. 5 Am. Jur. §657. The court can unquestionably condemn the interest of the insured under the policies to the satisfaction of the lien and can direct that such interest be paid by the insurance companies to the United States, the holder of the lien." p. 24.

With respect to Metropolitan's concern over the surrender of the policy, the court in United States v. Metropolitan Life Insurance Co., supra, stated:

> ". . . but the surrender is for the protection of the companies and they will be as well protected by the judgment of the court as by the surrender of the policies, ... Of course, surrender of the policies should be ordered if the policies are available for surrender." p. 24, 25.

Therefore, although surrender of the policies is not necessary to the government's success or failure, or the insurance company's protection, when possible it is a convenience which should be adhered to. In this case, Amanda Smith, who is before the court as a party plaintiff, has physical possession of the policies in question, and should the court direct, could produce the same.

However, while the policies in question have a property interest (cash surrender value) which is attachable to satisfy a federal tax lien reduced to judgment, and said judgment is not barred by any local statute (D. C. Code), it is axiomatic that the government may not attach one individual's property to satisfy a lien or judgment against another, even though they may be man and wife.

In the instant case, the insured, William B. Smith, disclaims any interest in the policies; while his wife maintains she is the sole owner of any property interest they may have. In support of her position she

relies on United States v. Burgo, 3rd Circ., 175 F. 2d 1961, where the District Court's findings that certain policies were the sole and exclusive possession of the taxpayer's wife, and that the taxpayer never had possession of the policies or any property therein, were affirmed as not clearly erroneous, and the court stated:

> ". . . since defendant Rose Burgo had possession of the policies here in question at all times it is quite clear that defendant Joseph Burgo was never at any time in a position to defeat her right to the policies by changing the beneficiary."

The facts of the instant case, however, differ substantially from those of the Burgo case. Here the insured has actually changed the beneficiary of the North Carolina Mutual Policy from his wife to his grandson in 1961, and borrowed against that policy in 1947. With respect to the Metropolitan Policy, he changed the contingent beneficiary in April, 1962.

Further, in the interrogatories propounded to the insurance companies by the United States, each responded in the affirmative to the following questions:

> "3. If you do possess or if you do have in your possession an insurance policy issued to the plaintiff, has the plaintiff:
>
> "a. Reserved the right to change the beneficiary?
>
> "b. Has the plaintiff the privilege of obtaining a loan against the policy?"

Also, each company stated that the respective policy was issued to the plaintiff. The North Carolina Mutual policy, however, was issued in the name of John Willie Smith, a name used by the plaintiff until 1922.

While the insured, William B. Smith, did not have actual physical possession of the policies, it is clear that he did procure each of the policies, that he has the sole power to change the beneficiary, that only he could make a loan against them, and that he also has the sole power to cash them in. Mere physical possession of the policies by his wife is not sufficient to defeat these rights. Certainly, if the policies were lost, he alone could require a duplicate to issue. It is also clear to the court that there has been no legal assignment of either policy under the respective contracts so as to be finding upon the insurers.

The Court, therefore, in looking to the legal ownership of the property interests in these policies, and based solely upon the evidence before the court, finds that legal title to the policies, and therefore to the proceeds of the cash surrender value of each, lies with the plaintiff, William B. Smith, during his life time; and if, as in this case, a Federal tax lien attaches before his death, said lien cannot be defeated by another's allegation of physical possession of them and the payment of certain premiums, absent proof of formal assignment as required by the contracts themselves. Here there is no such proof.

Accordingly, the Court finds that the plaintiff, William B. Smith, has a property interest in said policies, and that the policies are subject to condemndation to satisfy a Federal tax lien which has been reduced to judgment.

The government's motions for condemnation of the two policies is therefore granted, and Amanda Smith, party-plaintiff herein, will be directed to surrender each policy to the respective garnishee, and the order of the court shall so recite.

Counsel for the government is directed to prepare the appropriate orders.

/s/ Leonard P. Walsh
Judge

Copies to: * * *

[Filed Feb. 19, 1963]

ORDER

Upon consideration of the motion for judgment of condemnation filed on behalf of the plaintiff in intervention, the plaintiff's opposition thereto, the supplemental memorandum of the plaintiff in intervention and the plaintiff, and the argument of counsel in open Court, it is by the Court this 19th day of February, 1963,

ORDERED that the motion for judgment of condemnation be and the same hereby is granted, and it is

FURTHER ORDERED that the plaintiff, William B. Smith, and the added plaintiff, Amanda Smith, be and they are hereby directed to surrender to the garnishee, the North Carolina Mutual Life Insurance Company, its Policy No. 33390 within ten (10) days from the date of this Order, and it is

FURTHER ORDERED that the garnishee, the North Carolina Mutual Life Insurance Company, be and is hereby directed to cause to be paid to the plaintiff in intervention, the United States of America, upon receipt of said Policy, the cash surrender value of $580.51 of said Policy together with any terminal dividends attaching thereto within ten (10) days of the receipt of said Policy.

/s/ Leonard P. Walsh
United States District Judge

[Filed Feb. 19, 1963]

ORDER

Upon consideration of the motion for judgment of condemnation filed on behalf of the plaintiff in intervention, the plaintiff's opposition thereto, the garnishee's opposition thereto, the supplemental memorandum of all interested parties, and the argument of counsel in open Court, it is by the Court this 19th day of February, 1963,

ORDERED that the motion for judgment of condemnation be and the same hereby is granted, and it is

FURTHER ORDERED that the plaintiff, William B. Smith, and the added plaintiff, Amanda Smith, be and they are hereby directed to surrender to the garnishee, the Metropolitan Life Insurance Company, its Policy No. 01 005 716 S.C. within ten (10) days from the date of this Order, and it is

FURTHER ORDERED that the garnishee, the Metropolitan Life Insurance Company, be and is hereby directed to cause to be paid to the plaintiff in intervention, the United States of America, upon receipt of said Policy, the cash surrender value of $1,553.54 of said Policy together with the terminal dividend of $50.00 attaching thereto within ten (10) days of the receipt of said Policy.

/s/ Leonard P. Walsh
United States District Judge

THIEL & CASILLAS
209 C Street, N.W.
Washington 1, D.C.
Telephone 393-0625, 393-7217

BRIEF FOR THE APPELLEE

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,794

AMANDA SMITH, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

On Appeal From the Orders of the United States District Court for the District of Columbia

LOUIS F. OBERDORFER,
Assistant Attorney General.

MEYER ROTHWACKS,
GEORGE F. LYNCH,
ALEC A. PANDALEON,
Attorneys,
Department of Justice,
Washington, D. C. 20530

Of Counsel:

DAVID C. ACHESON,
United States Attorney.

STATEMENT OF QUESTION PRESENTED

Whether the taxpayer had property or rights to property in the cash surrender value of two insurance policies issued on his life which were subject to attachment in partial satisfaction of a lien securing his liability for federal income taxes.

INDEX

CITATIONS

Cases:

* Cases or authorities chiefly relied upon are marked by asterisks.

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UNITED STATES OF AMERICA, APPELLEE

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BRIEF FOR THE APPELLEE

COUNTER-STATEMENT OF CASE

On June 26, 1961, the United States, as plaintiff in intervention, obtained a judgment for unpaid taxes against William B. Smith (hereinafter referred to as "taxpayer" or "taxpayer-insured") in the sum of $33,780.85, plus interest at 6% on $33,494.43 from June 6, 1952, and on $286.42 from October 15, 1952, less a credit of $10,516.27. (J. A. 2, 10.) When the judgment remained unsatisfied, the United States

caused attachments to issue to the Metropolitan Life Insurance Company and to the North Carolina Mutual Life Insurance Company on February 15, 1962, and July 6, 1962, respectively. The attachment directed to Metropolitan was for $1,603.54, which represented the cash surrender value and terminal dividend as of February 15, 1962 in a life insurance policy issued by the company to taxpayer on June 21, 1951. The attachment directed to North Carolina Mutual was for $580.51, representing the cash surrender value of a life insurance policy issued by the company to the taxpayer (under the name John Willie Smith) on July 31, 1920. (J. A. 11.) In 1947, taxpayer had borrowed against his policy with North Carolina Mutual, and in 1961, he changed the beneficiary from his wife to his grandson. In April, 1962, he changed the contingent beneficiary of his policy with Metropolitan. (J. A. 14.)

On August 20, 1962 and September 24, 1962, the United States filed motions for judgment of condemnation against the sums held by the two insurance companies as garnishees, and in support urged that taxpayer had a property interest in the policies that was subject to the lien for taxes. On September 11, 1962, the District Court, upon motion of the United States, ordered that Amanda Smith (wife of taxpayer) be added as a party-plaintiff to the action (J. A. 1-3, 10).

The District Court granted both motions in favor of the United States, and in a memorandum opinion held (1) that the cash surrender value of each policy constituted a property interest subject to condemna-

tion to satisfy the federal tax lien which had been reduced to judgment, and (2) that the taxpayer-insured had a property interest in these policies (J. A. 15). From the orders granting these motions (J. A. 15-16), Amanda Smith appeals.

STATUTES INVOLVED

Internal Revenue Code of 1939:

SEC. 3670. PROPERTY SUBJECT TO LIEN.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

(26 U.S.C. 1952 ed., Sec. 3670.)

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time.

(26 U.S.C. 1952 ed., Sec. 3671.)

SUMMARY OF ARGUMENT

Under the law in the District of Columbia, the taxpayer-insured had the right to change the beneficiary

under each insurance policy, to borrow against it, and to demand the cash surrender value. The Supreme Court has held that these rights, some of which the taxpayer actually exercised, give rise to a property interest in the cash surrender value of each policy that is subject to the tax lien of the United States. Contrary to the contention of the appellant, the policies were never assigned to her by her husband, and neither payment of the premiums nor possession of the policies by her is sufficient to deprive the insured of his property interest therein. Accordingly, the District Court correctly directed that the cash surrender value be paid to the United States in satisfaction of its lien.

ARGUMENT

The District Court Correctly Held That the Taxpayer Had a Property Interest In the Cash Surrender Value of Two Insurance Policies Which Was Subject To Condemnation In Satisfaction of the Federal Tax Lien Which Had Attached Thereto

The issue in this case—whether the taxpayer had a property interest in the cash surrender value of certain insurance policies on his life which was subject to attachment in order to satisfy a lien for federal taxes assessed against him—is governed by the recent decision of the Supreme Court in *United States* v. *Bess*, 357 U.S. 51. In that case, the United States brought an equity suit in the United States District Court for the District of New Jersey to recover from the beneficiary of life insurance policies the amount of federal income taxes owed by the insured, a resi-

dent of New Jersey, at the time of his death, and with respect to which liens had arisen and attached to all of the insured's "property" and "rights to property" under Section 3670 of the Internal Revenue Code of 1939, *supra*. Noting that the rights of the insured were to be measured by the insurance contracts as enforced by New Jersey law, the Court held that the insured had no property interest in the proceeds of the policies to which the federal liens could have attached. Nevertheless, the Court said that the cash surrender value of the policies stood on a different footing. In this regard it held that the insured had property or rights to property within the meaning of the federal lien statute (Section 3670) by virtue of the fact that he possessed, just prior to his death, the right under the policies to compel the insurer to pay him the cash surrender value upon the surrender of the policies, and that he also had the right to borrow against, assign, or pledge this right. The Court further held, as against the contention that the insured's property right represented by the cash surrender value was not subject to creditors' liens, whether asserted by a private creditor or a state agency, that such exemption laws were not applicable to the United States and could not prevent the attachment of the federal liens.

In the instant case, federal income taxes for years prior to 1952 were assessed against the taxpayer on or before June 11, 1952. (JA 10.) As of that time, the United States acquired, under Sections 3670 and 3671 of the 1939 Code, *supra*, a lien on all of the

property and rights to property belonging to the taxpayer. Section 3670 provides that if any person liable to pay any tax neglects to pay such tax after demand, the amount (including any interest, penalty, additional amount, or addition to the tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States "upon all property and rights to property, whether real or personal, belonging to such person"; Section 3671 provides that, unless another date is specifically fixed by law, the lien shall arise at the time the assessment list is received by the Collector (now Director) and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time. See also *United States* v. *Security Tr. & Sav. Bk.*, 340 U.S. 47; *United States* v. *New Britain*, 347 U.S. 81.

The property rights to which this federal tax lien attached included the cash surrender value of the two insurance policies here involved inasmuch as the taxpayer-insured had reserved in each case the right to change the beneficiary, and also had the right to borrow against the loan value of the policies. In 1947, he actually exercised his right to borrow against the North Carolina Mutual policy; in 1961 and 1962, he changed beneficiaries under the North Carolina Mutual and Metropolitan policies, respectively. (J.A. 14.) Under the law in the District of Columbia, the insured party has the right to change the beneficiary of a life insurance policy, *Kindleberger* v. *Lincoln Nat. Bank of Washington*, 81 App. D.C. 101, 155 F. 2d 280, as well as the right to make an assignment

of his interest in the policy *Brand* v. *Erisman*, 84 App. D. C. 194, 172 F. 2d 28. Thus, the taxpayer had a property interest in the cash surrender value of each policy to which the federal tax lien attached. *United States* v. *Bess*, *supra*; *United States* v. *Metropolitan Life Insurance Co.*, 256 F. 2d 17 (C.A. 4th).

The taxpayer has disclaimed any interest in the insurance policies. (J.A. 11.) However, the taxpayer's wife, appellant herein, contends (Br. 8-9) that under Sections 30-213 and 30-214 of the District of Columbia Code (1961 ed.) she had in each case a vested interest in the entire policy, and that under Section 35-716 of the Code, her interest in those policies was not subject to attachment. A careful reading of these provisions shows that they deal only with benefits payable upon the death of the insured, commonly referred to as the policy proceeds, and that they evidence a Congressional intent to exempt the proceeds of insurance from the claims of the creditors of an insured husband. See *Kindleberger* v. *Lincoln Nat. Bank of Washington*, 81 App. D.C. 101, 105, 155 F. 2d 280, 285. These provisions of the District of Columbia Code do not relate to the cash surrender value of insurance policies, such as is here involved. Moreover, the term "creditors" as used in these provisions [1] cannot be construed to include the United States when it asserts its lien for unpaid taxes, for it is clear that state exemption statutes do not apply to

[1] The term does not appear in Section 30-214.

the United States. *United States* v. *Bess, supra.*[2] See also *Cannon* v. *Nicholas*, 80 F. 2d 934 (C.A. 10th).

Appellant also argues (Br. 10-12) that the policies were assigned to her by her husband, and that she has paid the premiums as they fell due. However, the District Court found (J. A. 14-15) that there had been no assignment of either policy in the manner specified in the insurance contracts. Furthermore, mere payment by the appellant of the premiums, without more, does not warrant a holding that the taxpayer-insured no longer owned the policies. *United States* v. *Fried*, 309 F. 2d 851 (C.A. 2d). And this is so even if taxpayer did not have possession of the policies. *Pollard* v. *United States*, (E.D. Va.), decided June 23, 1960 (60-2 U.S.T.C., par. 9569). The Government's lien cannot be defeated so simply.

The taxpayer, as owner of each policy, was the person to whom the companies would pay the cash surrender value upon cancellation. As long as he remains the owner, his wife cannot obtain payment for herself without his consent, and the appellant has cited no authority in this jurisdiction which would permit her to do so. *United States* v. *Burgo*, 175 F. 2d 196 (C.A. 3d), cited by the appellant (Br. 11), was decided under New Jersey law, and dealt with a

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[2] Although enacted by the Congress, these provisions of the District of Columbia Code are analogous to state law since they have only local application within the District of Columbia, whereas the revenue statutes are of national scope. *Jordan* v. *United States*, 93 App. D.C. 65, 207 F. 2d 28.

situation where the policies were delivered to the wife and never were possessed by the husband. In the instant case, the appellant admits (Br. 10) that the North Carolina Mutual policy was delivered to her by her husband in 1947, fully 27 years after issuance. (J.A. 3). It is unclear from the record when she gained possession of the Metropolitan policy, though her husband was able to change the contingent beneficiary in 1962, almost 11 years after issuance. (J.A. 11, 14.) In view of these undisputed facts, it cannot be seriously argued that the taxpayer had no property interest in these policies subject to the lien for taxes.

CONCLUSION

For the reasons stated, the orders granting the motions for judgment of condemnation are correct and should be affirmed.

Respectfully submitted,

LOUIS F. OBERDORFER,
Assistant Attorney General.

MEYER ROTHWACKS,
GEORGE F. LYNCH,
ALEC A. PANDALEON,
Attorneys,
Department of Justice,
Washington, D. C. 20530

Of Counsel:

DAVID C. ACHESON,
United States Attorney.

AUGUST, 1963.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1963 698136 146